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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,434	10/15/2003	Tetsuro Motoyama	242160US2CONT	7907
22850	7590	02/23/2010	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			SOUGH, HYUNG SUB	
			ART UNIT	PAPER NUMBER
			2194	
			NOTIFICATION DATE	DELIVERY MODE
			02/23/2010	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TETSURO MOTOYAMA, AVERY FONG,
and YEVGENIYA LYAPUSTINA

Appeal 2009-008304
Application 10/684,434
Technology Center 2100

Decided: February 19, 2010

Before LEE E. BARRETT, JAY P. LUCAS, and THU A. DANG,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal from the Examiner's final rejection of claims 1, 5, 8, 9, 13, 16, 17, 21, 24, 25, 29, and 32-44 under 35 U.S.C. § 134(a) (2002). Claims 2-4, 6, 7, 10-12, 14, 15, 18-20, 22, 23, 26-28, 30, and 31 have been

canceled. An Oral Hearing regarding this appeal was conducted on February 4, 2010. We have jurisdiction under 35 U.S.C. § 6(b)(2002).

We REVERSE.

A. INVENTION

According to Appellants, the invention generally relates to an application unit monitoring device which can monitor a user's usage of a target application of an application unit, and which can easily and efficiently communicate data of the monitored usage (Spec. 2, ll. 20-22).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. An image forming device comprising:

an operation panel of said image forming device, the operation panel comprising a plurality of operations to be selected by a user;

a clock unit;

a monitoring unit configured to monitor data of selecting of the plurality of operations of the operation panel by the user, and to generate a log of the monitored data in one of multiple formats, wherein the multiple formats include at least one of a time stamp including a time of selecting of the plurality of operations of the operation panel or a frequency of selection of the plurality of operations of the operation panel;

a communicating unit configured to receive the log of the monitored data, and to communicate data based on the log of the monitored data in one of the formats.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Aikens	US 5,414,494	May 9, 1995
Wygodny	US 6,202,199 B1	Mar. 13, 2001

Claims 1, 5, 8, 9, 13, 16, 17, 21, 24, 25, 29, and 32-44 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Wygodny in view of Aikens.

The rejection of claims 5, 8, 13, 16, 21, 24, 29, and 32 under 35 U.S.C. § 112 has been withdrawn.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Wygodny in view of Aikens teaches or would have suggested “a monitoring unit configured to monitor data of selecting of the plurality of operations of the operation panel by a user” (claim 1)? The issue turns on whether Aikens’ monitoring unit is configured to monitor the selection data of the operation panel.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Wygodny

1. Wygodny discloses monitoring and analyzing the execution of computer programs (col. 1, ll. 14-15).

Aikens

2. Aikens discloses the automatic notification to selected remote devices in response to machine conditions (col. 1, ll. 24-29).
3. Key machine operating events which define the proper execution of the control system such as user interface buttons being set, changes in application software operating states, etc., are input as they occur (col. 4, ll. 51-61; Fig. 3).
4. Suitable buttons enable the user to select operations (col. 7, ll. 43-48).
5. Job related events for automatic notification are a notification that the job has been completed, notification after the completion of X number of copies, or notification after a given job interrupt (col. 8, ll. 24-27; Fig. 7).

IV. PRINCIPLES OF LAW

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). “On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.” *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

V. ANALYSIS

Appellants contend that “Wygodny merely monitors how a software program is being executed” (App. Br. 11), whereas “the claims are directed to selecting operations on an operation panel of an image forming device selected by a user” (*Id.*). Appellants also contend that “Aikens discloses detecting machine conditions for automatic notification to remote stations, but at no point does Aikens disclose or suggest monitoring what buttons a

user presses on an operation panel of an image forming device” (App. Br. 13).

The Examiner finds that “Aikens is directed to monitoring key events in an image forming device” (Ans. 7), and “[s]ince user interface buttons are used to select certain functions..., user selection of operations is monitored” (*Id.*). In particular, the Examiner concludes that “Aikens teaches an operation panel can include buttons that initiate operations” and “[e]ntering commands through such an interface would be key operating events and one of ordinary skill in the art would understand such commands can initiate software operations, making it obvious to monitor such key events” (Ans. 9).

Accordingly, an issue we address on appeal is whether Wygodny in view of Aikens teaches or would have suggested “a monitoring unit configured to monitor data of selecting of the plurality of operations of the operation panel by a user” (claim 1). In particular, we address whether Aikens’ monitoring unit is configured to monitor the selection data of the operation panel.

After reviewing the record on appeal, we agree with Appellants. In particular, Aikens discloses the automatic notification to selected remote devices in response to machine conditions (FF 2). Although the Examiner finds that “user interface buttons are used to select certain functions” (Ans. 7) and that it would have been “obvious to monitor such key events” (Ans. 9), we find that the functions selected by the user in Aikens are not “data of selecting of the plurality of operations of the operation panel by a user” as

required by claim 1. That is, we find that Aikens monitors the conditions/functions that are selected by the user, rather than monitoring the selecting by the user as claimed.

Though Aikens discloses that key machine operating events such as user interface buttons being set are input as they occur (FF 3), that suitable buttons enable the user to select operations (FF 4), and that job related events for automatic notification include notification after the completion of X number of copies (FF 5), we do not agree with the Examiner that “user selection of operations is monitored” (Ans. 7).

Thus, though we agree with the Examiner that “user interface buttons are used to select certain functions” (Ans. 7) and that it would have been “obvious to monitor such key events” (Ans. 9), claim 1 does not merely require user selection or monitoring of key events. Contrary to the Examiner’s conclusion, claim 1 requires monitoring of “data of selecting of the plurality of operations of the operation panel by a user.”

We also find that Wygodny does not cure these deficiencies of Aikens. Wygodny merely discloses monitoring the execution of computer programs (FF 1), and also is not directed to monitoring data of selecting of operations. As such, we will reverse the rejection of representative claim 1 and independent claims 9 and 25 standing therewith, and claims 5, 8, 13, 16, 17, 21, 24, 29, and 32-44 depending therefrom, over Wygodny in view of Aikens.

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VI. CONCLUSION

Appellants have shown that the Examiner erred in concluding that claims 1, 5, 8, 9, 13, 16, 17, 21, 24, 25, 29, and 32-44 are unpatentable over the teachings of Wygodny in view of Aikens under 35 U.S.C. § 103(a).

VII. DECISION

We have not sustained the Examiner's rejection with respect to any claim on appeal. Therefore, the Examiner's decision rejecting claims 1, 5, 8, 9, 13, 16, 17, 21, 24, 25, 29, and 32-44 is reversed.

REVERSED

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